



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

September 16, 2019

Mr. W. Montgomery Meitler  
Senior Counsel  
Texas Education Agency  
1701 North Congress Avenue  
Austin, Texas 78701-1494

OR2019-25914

Dear Mr. Meitler:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 788029 (ORR# 38960).

The Texas Education Agency (the "TEA") received a request for e-mails during a specified time period involving a named employee of the TEA.<sup>1</sup> The TEA states it will withhold or release some of the requested information in accordance with the previous determinations issued in Open Records Letter Nos. 2019-19711 (2019) and 2019-19710 (2019). *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). The TEA states it is releasing some of the requested information. The TEA claims the submitted information is excepted from disclosure under sections 552.106, 552.111, and 552.116 of the Government Code. We have considered the exceptions the TEA claims and reviewed the submitted representative sample of information.<sup>2</sup>

---

<sup>1</sup>The TEA states it received narrowing of the information requested. *See* Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request); *see also* *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

<sup>2</sup>We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

Section 552.106(a) of the Government Code protects a “draft or working paper involved in the preparation of proposed legislation[.]” Gov’t Code § 552.106. Section 552.106 ordinarily applies only to persons with a responsibility to prepare information and proposals for a legislative body. *See* Open Records Decision No. 460 (1987). The purpose of section 552.106 is to encourage frank discussion on policy matters between the subordinates or advisors of a legislative body and the members of the legislative body, and therefore, section 552.106 does not except from disclosure purely factual information. *See id.* at 2. However, a comparison or analysis of factual information prepared to support proposed legislation is within the ambit of section 552.106. *See id.* A proposed budget constitutes a recommendation by its very nature and may be withheld under section 552.106. *See id.*; *see also Hooten v. Enriquez*, 863 S.W. 2d 522 (Tex. App.—El Paso 1993, no writ) (commissioner’s court performs legislative function when it creates the budget for county’s offices and departments).

The TEA states some of the remaining information, which it marked, consists of communications between TEA employees, legislators, and legislative staff members pertaining to proposed legislation. The TEA explains, “[t]hese communications were conducted under the direction of multiple members of the legislature to support their development of legislation.” The TEA further explains, “TEA employees provided advice, recommendation, and opinion in the preparation of [the] proposed legislation and prepared information at the request of the legislature concerning such legislation.” Upon review, we find the TEA has demonstrated the information at issue constitutes policy judgments, recommendations, and proposals regarding proposed legislation related to the TEA. Accordingly, the TEA may withhold the information it marked under section 552.106 of the Government Code.

Section 552.111 of the Government Code excepts from disclosure “[a]n interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency[.]” Gov’t Code § 552.111. This exception encompasses the deliberative process privilege. *See* Open Records Decision No. 615 at 2 (1993). The purpose of section 552.111 is to protect advice, opinion, and recommendation in the decisional process and to encourage open and frank discussion in the deliberative process. *See Austin v. City of San Antonio*, 630 S.W.2d 391, 394 (Tex. App.—San Antonio 1982, writ ref’d n.r.e.); Open Records Decision No. 538 at 1-2 (1990).

In Open Records Decision No. 615, this office re-examined the statutory predecessor to section 552.111 in light of the decision in *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.—Austin 1992, no writ). We determined section 552.111 excepts from disclosure only those internal communications that consist of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body. *See* ORD 615 at 5. A governmental body’s policymaking functions do not encompass routine internal administrative or personnel matters, and disclosure of information about such matters will not inhibit free discussion of policy issues among agency personnel. *Id.*; *see also City of Garland v. Dallas Morning News*, 22 S.W.3d 351 (Tex. 2000) (section 552.111 not applicable to personnel-related communications that did not involve policymaking). A governmental body’s policymaking

functions do include administrative and personnel matters of broad scope that affect the governmental body's policy mission. *See* Open Records Decision No. 631 at 3 (1995).

Further, section 552.111 does not protect facts and written observations of facts and events that are severable from advice, opinions, and recommendations. *Arlington Indep. Sch. Dist. v. Tex. Attorney Gen.*, 37 S.W.3d 152 (Tex. App.—Austin 2001, no pet.); *see* ORD 615 at 5. But if factual information is so inextricably intertwined with material involving advice, opinion, or recommendation as to make severance of the factual data impractical, the factual information also may be withheld under section 552.111. *See* Open Records Decision No. 313 at 3 (1982).

The TEA states some of the remaining information, which it marked, consists of communications reflecting internal deliberations of TEA staff regarding proposed legislation affecting the TEA. Thus, the TEA argues the information consists of advice, opinions, and recommendations of the TEA pertaining to its policymaking functions. Based on these representations and our review of the information at issue, we find the TEA has demonstrated the information it marked consists of advice, opinions, or recommendations on the policymaking matters of the TEA. Thus, the TEA may withhold the information it marked under section 552.111 of the Government Code.

Section 552.116 of the Government Code provides,

(a) An audit working paper of an audit of the state auditor or the auditor of a state agency, an institution of higher education as defined by Section 61.003, Education Code, a county, a municipality, a school district, a hospital district, or a joint board operating under Section 22.074, Transportation Code, including any audit relating to the criminal history background check of a public school employee, is excepted from [required public disclosure]. If information in an audit working paper is also maintained in another record, that other record is not excepted from [public disclosure] by this section.

(b) In this section:

(1) "Audit" means an audit authorized or required by a statute of this state or the United States, the charter or an ordinance of a municipality, an order of the commissioners court of a county, the bylaws adopted by or other action of the governing board of a hospital district, a resolution or other action of a board of trustees of a school district, including an audit by the district relating to the criminal history background check of a public school employee, or a resolution or other action of a joint board described by Subsection (a) and includes an investigation.

(2) "Audit working paper" includes all information, documentary or otherwise, prepared or maintained in conducting an audit or preparing an audit report, including:

(A) intra-agency and interagency communications; and

(B) drafts of the audit report or portions of those drafts.


Gov't Code § 552.116. The TEA informs us the remaining information, which it marked, consists of audit working papers prepared or maintained by the TEA's Division of Governance and Investigations. The TEA informs us the audits are authorized by section 39.057(a)(16) of the Education Code, which permits special accreditation investigations to be conducted as the commissioner of education determines necessary. *See* Educ. Code § 39.057 (listing circumstances in which the commissioner shall authorize investigations). Based on these representations and our review, we agree the remaining information consists of audit working papers for purposes of section 552.116. Therefore, the TEA may withhold the remaining information under section 552.116 of the Government Code.

In summary, the TEA may withhold the information it marked under section 552.106 of the Government Code. The TEA may withhold the information it marked under section 552.111 of the Government Code. The TEA may withhold the remaining information under section 552.116 of the Government Code.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,



Claire V. Morris Sloan  
Assistant Attorney General  
Open Records Division

CVMS/mo

Ref: ID# 788029

c: Requestor